

Department of Homeland Security

§ 241.15

determined by the Service, pursuant to § 241.13. The conditions of supervision shall not be subject to review by the immigration judge or the Board.

(k) *Subsequent review for aliens whose release would pose a special danger to the public*—(1) *Periodic review*. In any case where the immigration judge or the Board has entered an order providing for the alien to remain in custody after a merits hearing pursuant to paragraph (i) of this section, the Service shall continue to provide an ongoing, periodic review of the alien's continued detention, according to § 241.4 and paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(2) *Alien's request for review*. The alien may also request a review of his or her custody status because of changed circumstances, as provided in this paragraph (k). The request shall be in writing and directed to the HQPDU.

(3) *Time for review*. An alien may only request a review of his or her custody status under this paragraph (k) no earlier than six months after the last decision of the immigration judge under this section or, if the decision was appealed, the decision of the Board.

(4) *Showing of changed circumstances*. The alien shall bear the initial burden to establish a material change in circumstances such that the release of the alien would no longer pose a special danger to the public under the standards of paragraph (f)(1) of this section.

(5) *Review by the Service*. If the Service determines, upon consideration of the evidence submitted by the alien and other relevant evidence, that the alien is not likely to commit future acts of violence or that the Service will be able to impose adequate conditions of release so that the alien will not pose a special danger to the public, the Service shall release the alien from custody pursuant to the procedures in § 241.13. If the Service determines that continued detention is needed in order to protect the public, the Service shall provide a written notice to the alien stating the basis for the Service's determination, and provide a copy of the evidence relied upon by the Service. The notice shall also advise the alien of the right to move to set aside the prior review proceedings under this section.

(6) *Motion to set aside determination in prior review proceedings*. If the Service denies the alien's request for release from custody, the alien may file a motion with the Immigration Court that had jurisdiction over the merits hearing to set aside the determination in the prior review proceedings under this section. The immigration judge shall consider any evidence submitted by the alien or relied upon by the Service and shall provide an opportunity for the Service to respond to the motion.

(i) If the immigration judge determines that the alien has provided good reason to believe that, because of a material change in circumstances, releasing the alien would no longer pose a special danger to the public under the standards of paragraph (f)(1) of this section, the immigration judge shall set aside the determination in the prior review proceedings under this section and schedule a new merits hearing as provided in paragraph (i) of this section.

(ii) Unless the immigration judge determines that the alien has satisfied the requirements under paragraph (k)(6)(i) of this section, the immigration judge shall deny the motion. Neither the immigration judge nor the Board may *sua sponte* set aside a determination in prior review proceedings. Notwithstanding 8 CFR 3.23 or 3.2 (motions to reopen), the provisions set forth in this paragraph (k) shall be the only vehicle for seeking review based on material changed circumstances.

(iii) The alien may appeal an adverse decision to the Board in accordance with § 3.38 of this chapter. The Notice of Appeal should state clearly and conspicuously that this is an appeal of a denial of a motion to set aside a prior determination in review proceedings under this section.

[66 FR 56979, Nov. 14, 2001]

§ 241.15 Countries to which aliens may be removed.

(a) *Country*. For the purposes of section 241(b) of the Act (8 U.S.C. 1231(b)), the Secretary retains discretion to remove an alien to any country described in section 241(b) of the Act (8 U.S.C. 1231(b)), without regard to the nature or existence of a government.

(b) *Acceptance.* For the purposes of section 241(b) of the Act (8 U.S.C. 1231(b)), the Secretary retains discretion to determine the effect, if any, of acceptance or lack thereof, when an acceptance by a country is required, and what constitutes sufficient acceptance.

(c) *Absence or lack of response.* The absence of or lack of response from a de jure or functioning government (whether recognized by the United States, or otherwise) or a body acting as a de jure or functioning government in the receiving country does not preclude the removal of an alien to a receiving country.

(d) *Prior commitment.* No commitment of acceptance by the receiving country is required prior to designation of the receiving country, before travel arrangements are made, or before the alien is transported to the receiving country.

(e) *Specific provisions regarding acceptance.* Where the Department cannot remove an alien under section 241(b)(2)(A)–(D) of the Act, acceptance is not required to remove an alien to a receiving country pursuant to section 241(b)(2)(E)(i)–(vi) of the Act. Where the Department cannot remove an arriving alien under section 241(b)(1)(A) or (B) of the Act, acceptance is not required to remove an alien to a receiving country pursuant to section 241(b)(1)(C)(i)–(iii) of the Act.

(f) *Interest of the United States controlling.* The Secretary or his designee may designate a country previously identified in section 241(b)(2)(A)–(D) of the Act when selecting a removal country under section 241(b)(2)(E) of the Act (and may designate a country previously identified in section 241(b)(1)(A) or (B) of the Act when selecting an alternative removal country under subsection 241(b)(1)(C) of the Act) if the Secretary or his designee determines that such designation is in the best interests of the United States.

(g) *Limitation on construction.* Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

[70 FR 673, Jan. 5, 2005]

§§ 241.16–241.19 [Reserved]

Subpart B—Deportation of Excluded Aliens (for Hearings Commenced Prior to April 1, 1997)

§ 241.20 Proceedings commenced prior to April 1, 1997.

Subpart B of 8 CFR part 241 applies to exclusion proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.21 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the Act under such conditions as he or she may prescribe.

§ 241.22 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to 8 CFR part 240, subpart D may at any time surrender himself or herself to the custody of the Service and shall surrender to such custody upon notice in writing of the time and place for his or her surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his or her consent thereto filed in writing with the district director in charge of the place of his or her detention. An alien in foreign contiguous territory shall be informed that he or she may remain there in lieu of surrendering to the Service, but that he or she will be deemed to have acknowledged the execution of the order of exclusion and deportation in his or her case upon his or her failure to surrender at the time and place prescribed.

§ 241.23 Cost of maintenance not assessed.

A claim pursuant to section 237(a)(1) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from